



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2003

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2003-8004

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 190712.

The Garland Police Department (the "Department") received a request for information relating to a specified offense report. You indicate that you have released some responsive information to the requestor.¹ However, you assert the highlighted portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Section 552.108 of the Government Code, also known as the "law enforcement exception," provides, in relevant part, as follows:

¹ We note some of the submitted information that the Department has released to the requestor is not subject to release to the general public. However, in this instance, the requestor has a special right of access to his own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023 (providing that a person has a special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Because some of the information released to the requestor is confidential with respect to the general public, in the event the Department receives another request for this information from someone other than this requestor or his authorized representative, the Department must request another decision from this office.

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). Generally speaking, the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive. Subsection 552.108(a)(1) applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions whereas subsection 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication. A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). Based on our review of the submitted information and your arguments, we understand you to assert that the information you have highlighted in yellow relates to a pending criminal investigation. Therefore, we conclude that you have met your burden of demonstrating the applicability of subsection 552.108(a)(1) and have established that release of the information "would interfere with the detection, investigation, or prosecution of crime." See Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, we conclude that the Department may generally withhold the submitted highlighted information under subsection 552.108(a)(1) of the Government Code. However, the Department must release basic information, including a detailed description of the offense, in accordance with subsection 552.108(c). The Department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Christen Sorrell". The signature is fluid and cursive, with the first name "Christen" written in a larger, more prominent script than the last name "Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 190712

Enc: Submitted documents

c: Mr. Richard E. Chapman
6010 Marvin Loving #103
Garland, Texas 75043
(w/o enclosures)